

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

JOHN GILLESPIE,)
)
Plaintiff,)
)
v.) **Case No. CIV-19-1017-G**
)
MARK SACHSE,)
)
Defendant.)

ORDER

Plaintiff John Gillespie initiated this diversity action on November 6, 2019, seeking damages from Defendant Mark Sachse for breach of contract, unjust enrichment, and fraud. *See* Compl. (Doc. No. 1). On January 3, 2020, after Plaintiff had shown that Defendant has failed to plead or otherwise defend himself in this lawsuit, the Court of Clerk entered Defendant's Default pursuant to Federal Rule of Civil Procedure 55(a).

Plaintiff has now filed a Motion (Doc. No. 8) seeking entry of a default judgment against Defendant. Plaintiff's Motion is accompanied by an affidavit from Plaintiff's counsel, as contemplated by Local Civil Rule 55.1. *See* Williams Aff., Pl.'s Mot. Ex. 1 (Doc. No. 8-1); LCvR 55.1 ("No application for a default judgment shall be entertained absent an affidavit in compliance with the Servicemembers Civil Relief Act, [50 U.S.C. § 3931]."). The relevant statute prescribes that a court may not enter judgment against a nonappearing defendant unless: (i) the plaintiff files an affidavit "stating whether or not the defendant is in military service and showing necessary facts to support the affidavit"; or (ii) "if the plaintiff is unable to determine whether or not the defendant is in military

service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.” 50 U.S.C. § 3931(b)(1)(A), (B).

Plaintiff’s affidavit merely states: “There are no facts indicating that Defendant is in military service.” Williams Aff. ¶ 5. This statement is insufficient for compliance with the Court’s Local Civil Rule and § 3931(b). *Cf. Christ Ctr. of Divine Philosophy, Inc. v. Elam*, No. CIV-16-65-D, at *1 (W.D. Okla. Feb. 10, 2017) (finding affidavit sufficient when it stated upon information and belief that the defendant was not in the military service and was accompanied by a status report of a database search conducted by the Department of Defense); *In re Montano*, 192 B.R. 843, 846 (Bankr. D. Md. 1996) (rejecting affidavit that “fail[ed] to reflect any facts underlying the declaration or any investigation undertaken before the filing of the statement”).

Accordingly, Plaintiff’s Motion (Doc. No. 8) is DENIED, without prejudice to resubmission accompanied by a compliant affidavit.

IT IS SO ORDERED this 13th day of February, 2020.


CHARLES B. GOODWIN
United States District Judge